The South African Outlook

October 1, 1960.

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The South African Outlook

A man with God is always in the majority.

John Knox.

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A growing sense of urgency.

There must be few thoughtful South Africans who have not been conscious during recent weeks of a growing hysteria in our affairs. It is to be traced to a combination of causes, with the stepping up of the public campaign by the politicians for or against a change to a republican form of government as the leading one. Simultaneously with this has arrived the collapse of authority in the Congo and the picture of chaotic uncertainty prevailing there, picked out with dark shadows of violence and loss of control. Beyond this is the radically new backdrop further to the north, where country after country has been emerging into self-governing nationhood and joining the older countries in UNO on an equal footing. And this is in the Union's own continent, in which she has long fancied herself destined to play a leading role. But it is not working out that way at all, with the emergent nations proving to be strongly antagonistic to South Africa's policies and disposed to allow her no role at all but that of an outcast. It is not in the least to be wondered at that voices are rising from among those who have hitherto met the developments of the Government's policies with a naive and unconsidered acceptance, asking whether all the sound and fury, all the torrents of wordy warfare about the form of government is not mere fiddling while Rome burns. And the last-minute assurances that the constitutional change involved is nothing more than altering the name of the supreme officer of government from sovereign to president only add point to the questioning.

"It is later than you think" is the burden of a good deal that is being heard today amongst those who in general are disposed to support the apartheid principle. A recent instance was the speech of Dr. A. L. Geyer, national chairman of SABRA, to a meeting of that body the other day. It revealed acute awareness of the danger in which the country stands after twelve years under the doctrine that what matters above everything else is that the white man must be protected and that the first means to this end is a thoroughgoing programme of discrimination against the non-European, Dr. Geyer sees more clearly than most of his political associates that time is running out and he calls for an end to merely negative discrimination and for immediate concentration on the positive and constructive before it is too late. This involves, in his opinion, more rapid and thoroughgoing efforts for developing the Native lands, intense industrialisation of the border areas, and a real response to the grievances of urban Bantu, involving radical reconsideration of the pass laws and the Natives (Urban Areas) Act.

The Coloured people and the Indians are also in the picture. For them, too, it has thus far been mostly negative and merely discriminatory, and the hour is growing perilously late. Where is any positive and constructive programme for the former such as can be accepted by a people with their traditions and record? And as far as the Indians are concerned, Dr. Geyer is frank to say that the Government acts as if they did not really exist. In the revolution which is sweeping through the continent it is becoming clearer daily that the white man has little chance of holding on to political power such as he has known, and even the possibility of sharing of it is more than uncertain except in a few places. Even in South Africa, where he seems likely to retain control for longer, it must, under the policies now prevailing, involve enormous cost and confront a permanent atmosphere of sullenness and unrest.

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A levelling process in UNO.

With the admission of twelve new African members to the United Nations some rather sobering possibilities are opened up for that body. There is this year what amounts to an African break-through into its counsels with a considerable change of balance in consequence. Africa has become the dominant regional voting power and may possibly resolve to exploit the fact at considerable cost to older members. And behind this year's 'new boys' a number of others are lined up to join them within the next few years—Kenya, Gambia, Sierra Leone, Tanganyika, Uganda, Zanzibar, Ruanda-Irundi.

It may be presumed that this has not come about merely by chance. The desideratum of a seat in the council chamber of the nations undoubtedly played its part in the decision of the former French colonies to become separate rather than federated nations. Each stands now in its own right, however little real claim some of them have to real nationhood as the term is generally understood. The result is that the small division tends to lessen the weight of the larger ones. For example, France has one vote. She is a country with a very high record of civilisation and a population of over forty three millions. But her former West African colonies will have seven, or possible eight, and with less than half her population or weight in the life of the world. So we have the fact before us that as far as numbers go, Africa counts for more at UNO than Europe does, because she happens to have divided herself into smaller units.

Clearly the way is wider open than ever for any amount of bargaining, jockeying, and a variety of other corrupt goings-on. The African units may do well for themselves out of it, perhaps, but the good name of UNO and its stability will hardly be strengthened.

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Nigeria's new era.

The first of October becomes Nigeria's Day of Independence, destined to be celebrated, we trust, down the centuries as commemorating her emergence from wardship to the control of her own affairs. When set alongside the great united Nigeria, most of the other African states which in recent years have come through to independence seem almost insignificant. In size, in history, in the richness of her African and Hausa civilisations, in all-round potentiality, she seems to stand very high among them all. The contribution which she may be expected to make to African and, indeed, to world progress is very great indeed. The Christian Church has invested heavily in her welfare. Hundreds of graves in her soil, in north and south alike, witness to services eagerly given and sacrifices readily accepted. South Africa can claim a considerable and honourable share of them.

Nigeria's problems are commensurate with her greatness in other respects. The harmonious welding of North and South will test the wisdom and patience of her greatest leaders. A vital sector of the battle-front between Islam and Christianity runs through her territory. The development of her vast resources and the right use of her great prestige alike could influence profoundly the course of African history. It will be the deep concern of all who have any ardour for the Christian cause that the new era may also mean new impulses towards true freedom for all and new emancipation from age-long animosities and sinister forces. Nigeria challenges the prayers of Christian people.

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The Referendum: African views.

What an unreal business it is—supposed to ascertain what form of government the people of South Africa want, and yet limited to about a quarter of them. What the other three quarters think about so fundamental a matter is not asked or considered in any way. It is not thought to matter at all in a land where nevertheless the leaders profess to be insulted if their democratic convictions are challenged.

What the African section of these three quarters think about the issue is not very easy to ascertain. Great numbers of them have no idea of what it is about. Those who do understand something of it are reported to be predominantly against the change, largely for historical reasons. But when you ask thoughtful Africans you are likely to be surprised at their indifference in contrast to the seriousness of the Europeans. They tell you that it is a white man's *indaba*, and you will begin to suspect that it does not seem to them worthy of concern. Your surprise will lessen when you reflect that for them any idea of a shared South African nationhood has been strangled at birth. Full citizenship has always been denied them, and reasonable, if determined, efforts to claim it have so often been interpreted as criminal. (Such are our ideas of nation-building!) So the great 'Yes' or 'No' placards have no meaning for them. "But it may affect you vitally" you may say, and the answer will likely be "May it?" and you can begin to sense that behind this indifference lies nowadays the idea, gradually hardening into a conviction, that the white man may settle such affairs as he wishes for the present, but by and by the final settlement of African order will be with the black man. How could the present issue be other than meaningless to people who have never been encouraged to think that they belong and in this instance have been deliberately refused any say?

For the Africans who can appreciate the issue there is little encouragement in a major argument for a republic which is prominent in speeches by the Prime Minister and others, namely that it will unite the whites and secure their domination for the future. Clearly, they realise, the white man is hoping to use it to entrench himself in his *baaskap* and give nobody else any say. That seems to be the main aim of the present Government and makes all its proposals suspect.

Another rather curious argument is met with from some, and it is pro-republican. It is believed that by becoming a republic South Africa would certainly lose any prospect of incorporating the High Commission

Territories, so that there at least African interests would be a little more secure.

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The 400th Centenary of the Scottish Reformation.

A few days after publication of this issue Scotland is to witness some stirring scenes. The General Assembly of the Church of Scotland meets annually once a year in Edinburgh. To its meetings the Queen always sends a Lord High Commissioner as her representative. The Assembly which met in May last adjourned to meet again on Tuesday 11th October. This adjourned meeting is part of the commemoration of the 400th anniversary of the Reformation in Scotland. The Queen hopes to be present in person. This will be the first time since 1603 that the monarch has graced the Assembly with the Royal Presence. Delegates from Churches all over the world are expected to attend, and important figures in other walks of life have signified a similar intention.

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It may be asked, What is it that Scotland is to celebrate on this occasion ? Dr. Stewart Mechie, Lecturer in Church History in Glasgow University, has given the answer. In an address Dr. Mechie outlined the events leading up to the downfall in 1560 of the "Auld Alliance" between Scotland and France and of the Church of the Roman obedience in Scotland, and spoke of the consequences of these events in the life of Scotland. These included the emergence of a fully national Church concerned with the moral and religious instruction of the people, with no longer a hierarchical clergy, but a closer relationship between ministry and people ; a new stress on the Bible as the standard of what people should believe and do, with the Scriptures in the hands of all ; simpler and more vernacular worship, singing of psalms, the preaching of the Word, the abolition of Masses, of images, of the worship of relics and the invocation of the saints ; the ideal of a universal and Scriptural education open to all ; a new emphasis on the common man and the place he had to fill in Church and State. Dr. Mechie claimed that modern Scotland dates from that period and these factors are worthy of our celebration as something of relevance to the contemporary scene and the nation as a whole.

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"The Turbulent Priest."

Thus the not inapt heading of a leader in the *Argus* commenting on the deportation of the Anglican Bishop of Johannesburg last month. That is evidently just what the Government thought him to be, and it would seem to have been so nervous about it that it decided to lie low until he came back from abroad and then invoke its well-known Gestapo technique to whisk him out of the country before he could even have a word with his lawyers. The first reaction of people endued with any sense of proportion has been "How childish !" The Bishop was a thorn in the side of the authorities, of course, but nobody was likely to imagine that he was anything more than a very frank, fearless and exasperating critic of their current race policies and practices. Only very gullible people will imagine that he was really a danger to the safety of South Africa, but if there was evidence that he was, why have we not been told ? No such charge has been forthcoming, beyond a confused rumour that he had accused the police with using dum-dum ammunition, which was not true. The public is left with the conclusion that a consistent and inconveniently irritating opponent of the Government has been removed to a distance (though by no means muzzled) in a discourteous and amateur fashion. His criticisms will continue, with an added edge to them because he has been subjected to this hardship, and South Africa is once more humiliated in the eyes of a world already disposed to regard such treatment by our Gocvernment as a compliment to the recipient. It is very widely felt that in view of the imminent referendum on the matter of a republican form of government, at which the Government has been wishfully thinking to receive many English 'yes' votes, somebody high up in its hierarchy has blundered. At any rate very wide-spread sympathy has been expressed with the bishop from all sorts of sources, a leading archbishop of the Roman Catholic Church noting that it was evident that other people who opposed apartheid because of religious conviction could expect similar treatment.

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The Tribal Colleges : a Correction.

In a 'Note of the Month' in our August number, under the heading "The Tribal Colleges," we quoted a couple of sentences from a report from Fort Hare read at the recent NUSAS Conference in Cape Town. One of these asserted that "the Library is suffering a process of elimination without substitution." Most fortunately this caught the eye of Mr. Spruyt, the Librarian at Fort Hare. It surprised him very much, for it is utterly untrue. He has most kindly put us in possession of the facts which a visit to the Library and conversation with him have fully verified. We are glad to be able to record some of them.

There has been no 'elimination' of books since January of this year except for about 250 old and obsolete editions, mostly of theological works and many of them duplicates. These books were offered to students of the College and the Lovedale Bible School and many of them accepted, before the residue was sent to the paper-mills. In 1958, under the previous authority, 337 books were withdrawn, and in the following year 311. In

spite of the serious space shortage owing to the inflow of new books every effort is made to keep the withdrawal of obsolete books down to a minimum.

Then as regards 'substitution,' the actual figures for new books acquired are :—

1958	2,991
1959	2,794
1960—to Aug. 1st	2,104

The Library at present comprises some 40,000 volumes.

We would express our sincere regret that a sentence so grotesquely incorrect was quoted in these columns without any qualification.

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Other unmerited charges.

In the circumstances it may be as well that the facts should be known in regard to some other criticisms that have been directed to the same address. It has been alleged, for example, that in this Library "the shelves accessible to the students are dominated by current periodicals which favour parallel development." The fact is that the Library now gets 331 current periodicals of a scientific or general character, as against 293 in 1959. All these are accessible to the students, and among them are such papers as *The Contemporary Review*, *The new Statesman and Nation*, *The Partisan Review*, *Commonwealth*, *The Listener*, *The New-yorker*, *The Manchester Guardian Weekly*, *Overseas Quarterly*, *The Spectator*, *The Twentieth Century*, *The South African Outlook*, *African World*, *The Journal of Racial Affairs*, *The New Outlook*, *The Political Quarterly*, *Race Relations*, *and New African Studies*. In addition the following newspapers are presented to the Library by their proprietors and are on unrestricted display : *The Star*, *The Natal Mercury*, *The Cape Times*, *The Evening Post*, *Imvo Zabantsundu*, *Die Burger*, *Die Vaterland*, *Die Volksblad*, *and Die Transvaler*.

Any suggestion of an ideological censorship in the Library or a tendentious sifting of books or periodicals is quite impossible to support. The work of it is in the hands of an enthusiastic expert whose whole background predisposes him to the conviction that the truth is great and will prevail. If the students of the College are wise they will rejoice in the rich and varied treasure available to them in their Library and not fail to make full use of it. The Truth is there for them to find.

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A staunch and happy Warrior.

So the call has come for Abraham Faure Louw, quietly and easily, in his ninety fourth year, and we have lost one of our most notable Christian veterans. Although it was many years since he had retired from the active charge of a congregation, he had been continually engaged in promoting in all sorts of ways the missionary causes so dear to his heart.

He was born in the Free State, but his father moved to Murraysburg not long afterwards and it was there that he got his schooling. At Stellenbosch he was contemporary with Smuts, Hertzog and Malan., and in his long ministry of fifty three years he served the congregations of Graaff Reinet, Aberdeen, Bloemfontein, and Stellenbosch. During the Boer War he worked among the five thousand Boer prisoners of war in St. Helena, where a very remarkable spiritual movement crowned his ministry. As a result of it a large number of young men resolved to become missionaries, and when the war came to an end and a training centre had to be established for their benefit, he was released by his congregation of Graaff Reinet to take charge of it. This was at Worcester and occupied him for three years. Later he became the first Missionary Secretary of the Dutch Church of the Cape Province and served in this capacity for five years. He took an active part also in wider missionary affairs and in cooperation with other denominations.

He was greatly loved as a true man of God who poured himself out in the service of others. His gifts were many—a power of vision and of effective expression, a dry humour which gave point to his utterances public and private, a statesmanlike farsightedness, a disarming humility and with it the vigour, stern, if need be, of a prophet. "His best sermon" writes a journalist who knew him well, "was his life. The whole text of it was that a man must love his neighbour as himself. It gave him a personal interest in everyone he met—white, brown, or black—and gave a glow and urge to his missionary spirit to the end of his days. We feel thankful that such a man was one of us." He was generally regarded in his Church as the spiritual successor to Andrew Murray, whose nephew he was.

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A Prayer for these Times.

Grant us, O God, a vision of our land, fair as she might be : a land of justice, where none shall prey on others ; a land of plenty, where vice and poverty shall cease to fester ; a land of brotherhood, where success shall be founded on service, and honour shall be to worth alone ; a land of peace, where order shall not rest on force, but on the love of all for their common homeland.

Hear Thou, O Lord, the silent prayer of all our hearts, as in city, town, village or farm we pledge our time and strength and thought to hasten the day of her coming beauty and righteousnes ; through Jesus Christ, Our Lord. *Amen.*

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Constitution-Making for Democracy

An alternative to apartheid

D. V. Cowen

(Continued from the September number with acknowledgments to "Optima")

(Since April we have been reproducing in monthly instalments this most valuable pamphlet by Professor Cowen which appeared first as a supplement to "Optima." Various readers have expressed their appreciation of it, but we do not wish to spread it over too long a period and are therefore completing it this month by means of a double instalment.)

A BILL OF RIGHTS IN A RIGID CONSTITUTION

By far the most powerful of the protections that has hitherto been devised against the possible arbitrariness of a majority is the American practice—now widely adopted—of placing basic rights and freedoms beyond the reach of a legislative majority by setting them forth in a Bill of Rights, which is then incorporated in a rigid constitution to be interpreted by the Courts. Three separate points are here involved ; and, as I believe that this American practice should be adopted in South Africa, I shall elaborate.

CONTENT OF THE BILL

First, the framers of the constituion must be quite clear as to which rights and freedoms should be included in the Bill of Rights. This is by no means an easy matter, even though there be a wealth of precedents ; and, while this is not the place for detailed drafting, it may be useful for me to call attention to a few of the guiding principles.

Professor Wheare has, I think, conveniently summarized the two main difficulties which face the constitution-maker in determining the content of a Bill of Rights. First, in drafting the document, he should confine himself to essentials ; and though general and wide terms may often have to be used, he should, as far as possible avoid the ambiguous, the emotional and the tendentious.[73] Secondly, the circumstances, if any, in which the basic rights and freedoms may be qualified or suspended need particularly careful consideration.

Dealing with the first point, it is plain that there are certain rights and freedoms which are necessarily presupposed by any democratic system and without which it cannot exist. To begin with, freedom of thought, and freedom of discussion and of criticism, by the written and spoken word, are of the very essence of democracy. Again, one must include freedom of movement, of assembly and of association ; for if the government is to be responsible to the people's wishes, the people must be free to articulate those wishes effectively. Without these freedoms, which, of course, include freedom to form and join political organizations and to formulate and advocate political policies, the voice of the people would be stifled ; and democracy would ultimately die.

Then, too, if government is to be accountable to the people, freedom to vote and to stand for office must be accorded to a sufficiently broad mass of the people as a whole ; otherwise—as we have seen—there can be no talk of genuine democracy.

In several modern constitutions the rights and freedoms enumerated in the Bill of Rights are very wide-ranging, the tendency being to go well beyond the political sphere and give increasing emphasis to economic rights and freedoms. And, though the difficulties of definition in the economic field are formidable, there can be little doubt that the modern trend is a sound one. Plainly, for example, there should be freedom of avocation so that careers may be open to talent.[74] Then, again, the right to private property, and to immunity from expropriation without fair compensation, should be ensured.[75]

The right to life and personal liberty, and a guarantee of religious freedom, find a place in most well devised constitutions ; here, the main concern being to ensure adequate means for the speedy and sure enforcement of these rights. And in this regard, experience has shown that the writ of *habeas corpus*, or its Roman-Dutch law equivalent, the writ *de homine libero exhibendo*, is a most efficacious, indeed indispensable, guarantor of the right of personal liberty. Accordingly the benefit of *habeas corpus* should itself be written into the Bill of Rights, as well as the usual guarantee against punishment under *ex post facto* laws ; and a guarantee of fair and humane treatment of arrested, accused and convicted persons.[76]

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[73] *Modern Constitutions*, p. 73.

[74] See, generally, on the importance of economic freedoms and rights, the conclusions of the New Delhi Congress on the Rule of Law ; January, 1959.

[75] There are, of course, numerous precedents ; but the relevant provisions of the Indian Constitution, and the history of the litigation thereon, are of particular interest. See, generally, Gledhill, *Fundamental Rights in India*, pp. 67 *sqq.* ; pp. 105 *sqq.* ; Basu, *Commentary on the Constitution of India*, 2nd ed., pp. 132 *sqq.* ; C. H. Alexandrowicz, *Constitutional Developments in India*, 1957, pp. 35 *sqq.*

[76] This list does not purport to be exhaustive.

It is necessary, moreover, to ensure that all the enumerated rights and freedoms, precisely because they are essential, should be enjoyed by persons irrespective of race, colour or creed. Indeed, I would go further and suggest the desirability of a "non-discrimination clause," found in several constitutions, guaranteeing unhindered opportunity for individual advancement, and the right to equal protection of the law. In short, discrimination on the basis of colour should, in principle, be outlawed. I am aware, from practical exprience, of the difficulty of drafting equal protection and non-discrimination clauses ; and that (having regard to the present state of White public opinion) it may be necessary for the *full* implementation of non-discrimination and equal protection to be qualified for an interim period in regard to the franchise. But, if race relations are to develop soundly in South Africa, it is, in my view, essential that there be an immediate and explicit committal to the actual goal itself. And not only should there be a committal to the goal of non-discrimination on the score of colour ; but, in addition, a realistic constitution should be designed to give, from the outset, a very substantial measure of effective legal protection against such discrimination.

There is, too, an additional and, as I see it, very cogent reason for the inclusion of a non-discrimination and equal protection clause in the circumstances of South Africa. If, in fact, the franchise is to be qualified or weighted by the imposition of property or educational qualifications, it is essential that people of all races should have free and equal opportunities to acquire those qualifications. It would, for example, place the whole efficacy of the constitution in jeopardy if—to cite an example given by Mr. Justice Schreiner[77]—one were to lay down for the franchise an educational qualification of, say, the Junior Certificate examination, but leave the legislature free to prevent or impede a particular class of persons (for example, non-Whites) from qualifying ; or again, if one were to lay down a property qualification, and leave the legislature free to impose job-reservation in favour of a particular class.

As regards the circumstances in which the basic rights and freedoms may be qualified or suspended, Professor Wheare has said that "no realistic attempt to define the rights of the citizen can fail to include qualifications. Yet when we see the result, it is difficult to resist asking the question : what of substance is left after the qualifications have been given full effect ? "[78] I am disposed, however, to think that the difficulty has perhaps been rather too strongly stated by Professor Wheare. The Constitution of the United States lays down basic human rights and privileges in unqualified terms, and makes scant provision for suspension ; yet, on the whole, it has worked well.

The Constitution of the United States provides that the privilege of the writ of *habeas corpus* shall not be suspended (by Congress) "unless, in cases of rebellion or invasion, the public safety may require it "[79] ; and then it is for the courts to determine whether conditions have risen which would justify the suspension of *habeas corpus*. Moreover, as regards fundamental rights other than the right of *habeas corpus*, there is no provision for suspension by Congress : nothing short of constitutional amendment may suspend the Bill of Rights. This was laid down in the early case of *Ex parte Miligan*[80] where it was observed that "no doctrine involving more pernicious consequences was ever invented by the wit of man than that the (Bill of Rights) provisions can be suspended during any of the great exigencies of Government."

Times have, of course, changed since the United States Constitution was drafted, and most modern constitutions nowadays make some provision for qualification or suspension of even the basic rights. In doing so, however, the qualifying circumstances should be strictly limited—for example, to give two clear instances of cases of rebellion or war—and neither the legislature nor the executive, but the courts, should be the final authority to determine whether the requisite conditions have been satisfied. I do not suggest that war and rebellion are the only circumstances justifying a qualification of basic rights ; for it by no means follows that all the guaranteed rights should be treated on the same basis. For example, the circumstances justifying a qualification of *habeas corpus* are generally regarded as fewer and simpler than those which might warrant, say, a restriction upon freedom of speech so as to prevent its abuse by defamation, or by offences against decency or morality.[81]

A RIGID CONSTITUTION

I turn now to the second major point involved in the American Bill of Rights procedure, namely the incorporation of the Bill in a rigid constitution. This is indeed a critical step— for it is only by incorporation in a rigid constitution that the basic rights and freedoms can be effectively put out of reach of an ordinary legislative majority. The reason, why this is so, becomes manifest when one considers the definition of a rigid constitution. A rigid constitution differs from a flexible one in the way in which it can be amended. Whereas a flexible constitution can be amended, and even entirely changed, by

[77] Cf. *The Senate Case*, 1957 1 S.A. at p. 574 (A.D.).
[78] *Modern Constitutions*, p. 57.
[79] Art. 1, sec. 9(2).
[80] 1866, 4 Wall, 2.
[81] On this difficult subject, as a whole, see Basu, *op. cit.*

the ordinary process of legislation (that is, by a majority vote of fifty per cent plus one, in exactly the same way as will do for enacting, say, a dog-licensing Act), a rigid constitution can only be amended by a special procedure.

Not only is the amending process the key to the difference between a flexible and a rigid constitution, but it is also the kernel of sound constitution-making, making big demands on technical skill and foresight. The ideal, of course, is to ensure that the amending process is neither so difficult as to make amendment virtually impossible nor so loose as to facilitate circumvention. And here it may be useful to point out that the South African constitution has never been rigid in the full sense. Whereas a rigid constitution is one *all* of whose provisions require a special amending process, the framers of the South Africa Act chose a compromise technique of " partial rigidity " : that is to say, some of the clauses required a special amending procedure, whereas others, including the vital clauses dealing with the composition of the legislature itself, did not.

In the result, this proved to be the Achilles heel of the so-called " constitutional safeguards " in regard to the franchise. But the proven weakness of the South African Constitution as originally drafted—however damaging it has been to the faith of many people in the efficacy of constitutional guarantees—should not blind one to the fact that it is possible to devise far more effective safeguards.

Basically, the requirements for effective[83] entrenchment are :

(a) to ensure that, as far as possible, all the topics of fundamental constitutional significance are expressly dealt with in the constitution itself ; and

(b) to lay down a special and difficult procedure for the amendment of each and every clause in the constitution.

Let us assume, for example, that the constitution deals specifically with such vital matters, among others, as the composition and powers of the legislature ; the appointment and powers of the judiciary ; the franchise, the delimitation of the constituencies, and the qualifications and disqualifications of members ; and that it also includes an equal protection and non-discrimination clause. It is easy to see that if a special amending procedure—say, a two-thirds majority vote[84]—were made applicable to *all* the provisions of the constitution, it would not be possible to circumvent the constitution and by-pass the special amending procedure by using such stratagems as " packing " the legislature or the Courts. Nor, in fact, could such a constitution be circumvented, at any rate without difficulty, by other stratagems.[85]

There are some who prefer not to make all the provisions of a constitution subject to a special amending process on the ground that this may entail too high a degree of rigidity. But the great danger about resorting to the technique of " partial rigidity " is that one may omit to safeguard a particular feature which may be tinkered with in such a way as to nullify, by indirect means, the " safeguards " themselves. This, in fact, is precisely what happened in the case of the South African constitution : the composition of the Senate was left at the mercy of an ordinary majority ; and an ordinary majority thereupon by the simple device of " packing," nullified the so-called " safeguard " which required a two-thirds majority for dealing with the franchise.

JUDICIAL REVIEW

The third essential point in regard to the American Bill of Rights procedure concerns the position of the judiciary. It is not sufficient to frame a satisfactory Bill of Rights : it is not enough to devise a satisfactory special procedure for constitutional amendment, and to determine with accuracy the particular clauses to which it applies. In addition, it is necessary to empower the judiciary to interpret the constitution and strike down legislation which conflicts with its provisions. Some rigid constitutions have done without this power of " judicial review," and have left the legislators to be the final interpreters of the constitution and the arbiters of their own powers.[86] But it is generally admitted that, without judicial review, the role of a rigid constitution, as a safeguard against the excesses of a majority, is enormously weakened.

It must be conceded, however, that judicial review has the defects of its qualities. It admittedly tends to bring the judges into the arena of politics ; and there are some eminent authorities—like Professor H. S. Commager—who regard it as a serious impairment of the democratic principle, on the grounds, that it gives enormous power to judges who are not removable by the people, and tends, moreover, to deaden the people's sense of responsibility.[87] But, despite all that can be said against

[82] Though the expression " rigid " is in general use, Lord Birkenhead's alternative expression " controlled " seems preferable ; for rigidity carries the misleading and incorrect inference of unalterability. Another useful synonym for " rigid " is " formal."

[83] As stated more fully, however, in the concluding section of this article, no constitution can give *complete* security, or be proof against every artifice of human malignity and cunning.

[84] A wide variety of excellent precedents are available. Sidgwick makes the point that to require a special majority involves, strictly speaking, a deviation from normal democratic procedure, *op.cit* p. 612. This is so, but it is a deviation which experience has justified in order to safeguard the very ideals of democratic freedom.

[85] See note 105 below.

[86] For a brief account, see my article on *Legislature and Judiciary*, 1953 Modern Law Review, p. 283.

[87] H. S. Commager, *Majority Rule and Minority Rights*, pp. 28 *sqq.*, 79-80. This was also Gen. Smuts's view. See Walton, *The Inner History of the National Convention*, pp. 60-61.

the power of the judicial review, it is the general opinion that, on balance, its merits outweigh its defects.[88]

There remains one further point which must be dealt with before leaving the subject of the American Bill of Rights procedure. It is essential that the judges be given adequate independence and security of tenure, and that the methods of appointment and dismissal be themselves placed beyond the reach of legislative or executive manipulation. Long ago, Lord Bryce revealed a weakness of the existing Constitution of the United States of America in this connection— and he showed how, by the device of "court-packing," a president could make the protections of the constitution disappear "like a morning mist."[89] In the intervening years, however, the whole question of judicial tenure has been intensively studied, and marked progress has been made. One of the most recent and, in my view, soundest methods of dealing with the subject is to be found in the law of Israel, under which members of the Bar, and of the existing judiciary, are given a voice in judicial appointments.

FEDERATION AND MINORITY PROTECTION

Up to this point, we have discussed the kind of constitutional safeguards whose utility is by no means confined to communities with a race problem. And the question now arises whether any additional protection is either necessary or desirable in a multi-racial country like the Union of South Africa.

The incorporation of a Bill of Rights in a properly drafted rigid constitution would, in itself, provide a very valuable safeguard against the abuse of governmental power. Moreover, if a non-discrimination and equal protection clause were included in such a constitution, the individual citizen would be protected against what is perhaps the major risk in South Africa, namely prejudice on the score of race, colour or creed. But while this is so, and while I, personally, would be content to dispense with additional safeguards, it is plain that the degree of protection could be substantially increased by resorting to federalism—a topic which now remains to be discussed.

The incorporation of a Bill of Rights in a rigid constitution safeguards individual interests by placing what is often called a "check" on majority decisions. Federalism, on the other hand, seeks to tame power by dividing it up, and "balancing" one part against another. A federation may, however, be organized either on a territorial or on a racial basis, or on a combination of both. And as it is the racial method of organization which is most relevant to the subject of protecting minority groups in South Africa, I shall deal with it fairly fully. But first a few words about territorial federation.

TERRITORIAL FEDERATION

The main argument usually put forward against the idea of territorial federation in South Africa is that "it is ruled out by the colour problem." Thus, it has been claimed that it is essential to deal with race relations throughout the Union in a uniform way. And as each and every aspect of government may involve a question of race relations, it is argued that the provinces could not be given exclusive and unlimited authority over *any* matter, without endangering the requirement of a uniform method of dealing with race relations.[90]

There is, however, an answer to this argument— for it is based on the outworn notion that it is the function of the "White races to govern the vast Native population of South Africa."[91] If this notion were abandoned— as in my view it must be—and replaced by the more wholesome idea that colour should be no bar to participation in government, the alleged obstacle would fall away, and one could then both advocate territorial federation and concede the desirability of a uniform policy in regard to race relations. But this would be a different uniform policy from that which actuated the majority of the founders of the South African Union in 1910 ; the policy would, in short, be one of overall non-discrimination, leaving the provinces free to regulate many important matters as they like—subject always to the proviso that their legislation shall be non-discriminatory.

As regards the actual merits of territorial federation, it is my view that a devolution of powers on a territorial federal basis is not only workable in South Africa, but also desirable. In a proper federal structure, the powers of the existing provincial councils could very usefully be extended, and safeguarded from interference by the central government. Again, the existence of the federal legislatures could be used to tighten the procedure for constitutional amendment by requiring their concurrence. And there is yet another consideration—per-

[88] I have elsewhere undertaken a comprehensive examination of the pros and cons of judicial review : *The Case For and Against the Testing Right ;* University of Cape Town Summer School, Feb. 1956. For a lucid and well-balanced exposition in short compass, see K. C. Wheare, *Modern Constitutions*, Home University Library, chapter 7.

[89] Bryce, *The American Commonwealth*, 3rd ed., 1900, vol. 1, p. 276.

[90] One of the architects of the South African Union, the late Mr. Lionel Curtis, once told me that this, in his view, was the decisive argument in favour of the decision to unify rather than federate in 1909-1910. And see, to the same, effect, the speech of the Under-Secretary of State for the Colonies (Colonel Seeley) during the passage of the South Africa Act through the British Parliament quoted in A.P. Newton, *The Unification of South Africa*, 1924, vol. 2, p. 259.

[91] I quote Colonel Seeley's words during the debate on the South Africa Act : Newton, *op.cit.*, p. 259.

[92] It will, of course, not escape attention that this idea has been rejected by the present Government on the ground that the presence of Whites and non-Whites in a Federal Parliament would conflict with the basic ideas of *apartheid*.

haps a more important one. Plainly, the existing African areas (the Reserves) must be encouraged to develop both economically and politically ; and the possibility of their association with the rest of South Africa on a federal basis should not be excluded.[92]

In the result, therefore, I feel that the idea of territorial federation has sufficient merit to justify its inclusion as a serious proposal for consideration by a National Convention. However, whatever decision may ultimately be taken in regard to territorial federation, it should perhaps be reiterated that it is not an indispensable idea for the safeguarding of individual rights : a rigid constitution, interpreted by the judiciary, and affording valuable protection to individuals, can be established without resorting to territorial federation.[93]

RACIAL FEDERATION AND THE CONCURRENT MAJORITY

The basic idea underlying racial federalism is the division of power among the various racial (or religious or linguistic) groups in a country, without reference to their territorial distribution. And in explaining the idea, it is convenient to begin with the crisply formulated views of the American statesman, John Calhoun, who developed a theory of the so-called concurrent or constitutional majority.

According to Calhoun, society should not be regarded as merely an aggregate of individuals. If this were the case, he felt, the unqualified majority principle would be sound enough. But society is more than this ; it is also an aggregate of group interests ; and so legislation should not be passed merely because it is desired by a majority of the people, unless the decision is also concurred in by a majority of any group whose interests are vitally affected. Thus :

" There are two different modes in which the sense of the community may be taken. One, simply by the right of suffrage, regards numbers only, considers the whole community as one unit, and deems the sense of the greater number of the whole as that of the community. The other (mode).... regards interests as well as numbers, considers the community as made up of different and conflicting interests so far as the action of the government is concerned, takes the sense of each through its appropriate organ, and regards the united sense of all as the sense of the entire community. The former of these I shall call the numerical or absolute majority, and the latter, the concurrent or constitutional majority."[94]

Arguments along the same lines have also been strongly urged on the Continent of Europe, their inspiration going back to the idea, medieval in origin, of voting by nations which is practised in several European universities.[95] In more recent times the most influential and lucid exponent of racial federalism has probably been the Austrian scholar, Joseph Redlich. And, as his views were developed specifically with an eye to constitution-making in a multi-racial society, they are worth quoting. According to Redlich, the technique of a majority vote to ascertain the " general will " has a very limited role in a multi-racial community. Thus :

" The fundamental problem of democracy is the formation of the ' general will ' of the people, that is, the deciding of legislative enactments by the absolute majority. In cases where two or more nationalities inhabit one and the same country, a ' general will ' can be constituted only if and when the specific national, racial or religious interest of each group is eliminated from the question to be decided by the people as a whole. Only so far as this can be done, is it possible to assure that by a direct vote of each citizen, or by the duly and equally elected representatives of all citizens, anything like their ' general will ' can be ascertained. Any principle laid down in the constitution recognizing the full equality of both or more nationalities can be altered only by the voluntary agreement of the minority nationality and the majority people."[96]

And again :

" It is a fact, and it must be particularly emphasized, that the recognition of the principle of a certain minimum of rights of a racial, confessional or language minority, as a legally acknowledged corporate minority, is considered by modern European thought and political morality as one of the essential, nay indispensable, conditions of a truly civilized conception of human existence in a state. This is the result of the development of the idea of the rights of each nationality as one of the strongest elements of individual and collective political feeling, and one of the strongest levers of political activity of modern man during the whole nineteenth century. It cannot be doubted that just as the rights of man, as an indefeasible part of the birthright of every individual man or woman, had been elaborated during the eighteenth century, so the idea that the rights of any social group bound together by the feeling of being a special nationality, differing from that of the governing

[93] The contrary assumption is a popular misconception : Eire, Portugal, Norway, Greece and Italy have rigid but *unitary* constitutions ; and the power of judicial review is exercised. See 1953 *Modern Law Review*, pp. 385-6.

[94] *A Discourse on Government ;* Gralle's ed. (1841), p. 28. cf. Alexander Hamilton in *The Federalist*, paper 51.

[95] See Gierke's *Political Theories of the Middle Ages*, Maitland's translation, p. 167 : " The federalistic character of medieval groups gave rise to many elaborate schemes for securing a certain amount of independence to smaller bodies that were components of a larger body." See also Rashdall, *The Universities of Europe in the Middle Ages*, vol. 1, pp. 412 *sqq*.

[96] " *Sovereignty, Democracy, and the Rights of Minorities,*" in Harvard Legal Essays, 1934, p. 391.

people or the majority nationality in a country or empire, must also be acknowledged as fundamental ; and has become an integral part of the European conception of political justice and freedom.''[97]

One of the best examples of how these ideas may be translated into the practice of actual constitution-making is given by Redlich himself. In Moravia the Czechs and the Germans lived together in a numerical proportion of about 70 to 30 per cent ; and each group wished to maintain its own identity. Accordingly, under the Constitution of 1905, membership of each of the two nationalities was made a formally acknowledged legal status, and a legal duty was placed on every citizen to register in a particular national group—the enlisting taking place in accordance with his own declared will. The legislative assembly was composed of curiae or corporations representing the two nationalities ; and they were given proportional representation.

The problem then remained of ensuring that the Czech majority could not use their voting power so as to violate the national, and especially the linguistic, rights of the German minority. The solution—based on the idea of racial federalism—was embodied in clause 38 of the constitution, under which certain special '' national interests of the German minority '' were enumerated, *inter alia ;* (a) any amendment of the constitution - (b) laws concerning the use of language - (c) laws concerning the disestablishment of schools ; (d) grants of money to schools ; and (e) the franchise. And in these matters the voting procedure was so arranged that the requisite majority for legislation could only be obtained if both national bodies agreed.

Now, were it considered desirable to do so, these principles could be adapted to the circumstances of South Africa, so as to give a power of veto to any racial (or religious or linguistic) group which might consider its vital interests to be jeopardized by the decision of any other group. Not only, for example, could these principles be used to give additional protection—in the form of actual voting power in the legislature—against discrimination by the Whites, but they could also be used to give protection against discrimination by the non-Whites (who may and should eventually become an enfranchised majority.)[98]

Thus, one could begin by writing into a constitution all the provisions which it is desired to place beyond the reach of an ordinary majority decision—including such matters as the basic freedoms (of association, speech, etc.) ; the composition and powers of the legislature ; the appointment, tenure and function of the judiciary ; the franchise ; the delimitation of constituencies ; and the qualifications of members. The next step would be to use the notion of racial federalism in regard to the amending clause. And probably the most effective way of doing this would be to constitute a second chamber, properly representative of all the various racial groups, and to lay it down in the constitution that no constitutional amendment may validly be passed without the concurrence of a majority of each racial group in the second chamber, as well as an overall majority of the members.

It would, however, be folly to imagine that the idea of racial federalism is not open to forceful criticism. To begin with, Calhoun's ideas have been spiritedly attacked by Professor H. S. Commager [99] and I entirely agree with Dr. Kiano when he says that the recognition of distinct racial groups, having a defined legal status, is not an ideal solution for a multi-racial society.[100] The overriding consideration in principle should be to attempt to minimize the legal relevance of racial distinctions, and not to perpetuate them.

Certainly, if in implementing the notion of racial federalism, one were to divide the electorate into racial groups, each electing a quota of members of its own race, one would lay oneself open to all the criticism that has so often, and so cogently, been levelled against communal representation. In this regard, therefore, if a second chamber is to be constituted on a racial basis, it may be preferable not to insist that the electorate itself be organized on a racial basis. One could, for example, have large multi-racial member constituencies on the Tanganyika model - and seats in the second chamber could be '' reserved '' or allocated to the races in fair ratios—for example to the Whites, the Africans, the Asians and the Coloureds ;[101] that is to say, while the members of the second chamber would be members of particular racial groups, they would be chosen by racially mixed electorates on a common roll.[102]

There are, however, yet other difficulties in the way of racial federalism. The implementation of the idea would involve the perpetuation of some form of population register ; and, however one may seek to mitigate the asperities of the present practice, it would probably still be necessary to devise fair and workable definitions of the various racial groups.[103]

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[97] *Op.cit.*, pp. 391-2.
[98] If such protection were given in the form of actual voting power on a racial basis, it would be additional to the judicial safeguards provided by a Bill of Rights in a rigid constitution.
[99] *Majority Rule and Minority Rights*, pp. 13 *sqq.*
[100] Colonial Times, Nairobi, August 21, 1958.
[101] I forbear from going into such matters as whether, for example, it would be appropriate to distinguish between English-and Afrikaans-speaking ; or among the Africans, between Westernized and tribal ; and so on.
[102] At the same time it must be conceded that this method of constituting the second chamber would weaken its capacity for giving protection of the kind envisaged.
[103] I am doubtful whether, having regard to the complex racial groupings in South Africa, it would be possible to dispense with

And finally, if these ideas are to be implemented, it is essential—above all—to be clear as to precisely what powers should be given to the second chamber. What powers, for example, should it have in regard to ordinary legislation, other than constitutional amendments; should it have powers of veto in such matters as well[104]; if so, what provision, if any, should be made for resolving a "deadlock"; should the second chamber have power to initiate legislation; and what provision is to be made in regard to money bills?

All these are questions of considerable difficulty and importance, and they have wide-ranging ramifications. For example, the more powerful the upper chamber is made, the more it affects Cabinet responsibility. Again, unless care is taken, racial bias might be used to impede the passage of essential legislation on "filibustering" lines—even though the legislation be entirely non-discriminatory. Indeed, it is necessary for constitution-makers not to assume that men always act in a sweetly reasonable way.

But the technical difficulties are not insuperable. And, in any event, they are the kind of difficulties which—if the principle of racial federation in a second chamber were accepted—could appropriately be settled at a National Convention.

More serious, in my view, is the objection that racial federation tends to perpetuate racial thinking in politics, notwithstanding its undeniable advantage of affording perhaps the maximum possible security against group discrimination.[105] Indeed no part of this study has given me more difficulty than that of weighing the merits of the idea of racial federation in its application to South Africa. While, after the most anxious consideration, I am personally loath to advocate its adoption, as I suspect that its disadvantages may outweigh its benefits, I am very conscious that as long as the races feel themselves to be distinct, and have yet to earn each other's trust in a full non-racial democracy, it may be necessary for the time being to acquiesce in measures falling short of the ideal. Certainly, the idea merits the most careful consideration; for, during a critical interim period, it might conceivably provide a meeting ground between the races, while mutual trust and confidence is allowed to develop.

CONCLUSION

In this study, I have attempted to outline the framework within which a new constitution for South Africa may be constructed. But I must not be mistaken for one of those who regard constitutions as a panacea for all a country's ills. On the contrary, it is manifestly foolish—and I would add, politically illiterate—to place too much confidence in the efficacy of constitutions to provide social and political security and stability.

Constitutions can make the way of the transgressor difficult; they can delay a determined majority; they can do much to tame power and prevent its abuse; but they can never, of themselves, provide complete security and create a healthy society. De Tocqueville once described the American Constitution as the most powerful barrier against tyranny yet devised by man; but there are ways of circumventing even the American Constitution—as Negro voters in the South will explain, despite the Fifteenth Amendment. Indeed, there are at least two factors more basic than constitutional guarantees, and on which ultimately their whole efficacy depends.

First, there is the character of the people who work the constitution. I do not go so far as Professor Hearnshaw when he says that "there is no remedy for the tyranny of the majority—and there is need of none—save the purification of public opinion, the elevating of public life, the rousing of public spirit, the education of public conscience, and the developing of a sense of public responsibility.... Not in futile attempts by means of subtle devices to curb and check majorities, but by a magnanimous use of their omnipotence lies the way of deliverance."[106] I have more faith in the value of constitutional guarantees—properly devised—than Prof. Hearnshaw; but his words undoubtedly have a great deal of truth in them; and they should warn against placing too much trust in legal barriers.

Secondly, there is the necessity for earning goodwill by conduct. The best constitution in the world will do little to provide security if the races are unable, by their daily conduct, to earn mutual respect and goodwill.

I have given emphasis to these cautions, because experience has taught me that no fallacy is more wide-

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objective definitions and leave the determination of racial identity entirely to the individual's discretion.

[104] One possibility would be to provide for powers of delay only, in matters other than constitutional amendments.

[105] The Constitution of Ceylon does not incorporate the ideas of racial or territorial federation; but it does include a non-discrimination clause and a special procedure for amendment. However, despite the non-discrimination clause a large group of Indian Tamils were recently disenfranchised by legislation which (*a*) made the franchise dependent on Ceylon citizenship and (*b*) in effect excluded from citizenship the Indian Tamils resident on the island. See *Pillay v. Mudanayake* (1953) 2 W.L.R. 1142. Had the consent of the Indian Tamils been required for these measures, by virtue of some form of racial federation, they would clearly have vetoed the proposals, and safeguarded their franchise.

At the same time it would be wrong to suggest that racial federation was the only way in which the Indian Tamils (and other groups) could find security. Without resorting to racial federation, it would in fact not be difficult to draft far tighter guarantees than those contained in the existing Constitution of Ceylon. As explained earlier in this article essential matters should not be ommitted from a rigid constitution; and the fundamental weakness of the Indian Tamils' position was that the qualifications for the franchise were not specifically enumerated in the Constitution; but were left to be dealt with by ordinary legislation. See, generally, Jennings, *The Constitution of Ceylon*, ch. 5.

[106] *Democracy at the Crossways*, p. 335.

spread than a blind belief in the efficacy of constitutions and laws ; people often want the kind of security which is unattainable by legal techniques ; they sometimes wish to transplant the untransplantable[107] ; and they often fail to remember that it is not enough to say to an expert "draw up a constitution"—the expert must be guided by what the people really want, and what is likely to work. Indeed, the things that matter most are often not realized, and seldom thought through, by the advocates of constitutional reform. I say these things to put constitutions and their efficacy in perspective ; and to induce a healthy humility.

I am very conscious that I have offered no quick or facile solution for the many problems of race relations which confront South Africa. But, in my view, there is no such solution. The great problems of experience are never solved in any mathematical or final sense ; and they yield to no precise formulas. There is no easy, no royal road to racial harmony in South Africa. Nevertheless, I believe that if White South Africans would only abjure, in time, the delusions of apartheid, and recognize the urgent need for a genuinely non-racial democracy, then, the proposals and suggestions for constitutional reform which I have outlined might provide an opportunity for co-operative adjustment and peaceful co-existence between the races, which I see as the only alternative to disaster.[108]

[107] It is a truism that the British Constitution is not easily transplantable, but it should also be realized that there are certain features of the American Constitution, especially in regard to the Senate and the Presidency, which were not made for ready export.
[108] This article was written in August and September, 1959, and the proofs finally revised early in January, 1960.

The Monckton Commission Report

A WARNING AGAINST SCARE HEADLINES

By the Very Rev. Dr. R. H. W. Shepherd.

THE Monckton Commission finished its labours early in September (on 2nd September to be exact) and the Report was handed to Mr. Macmillan, the Prime Minister, the following week. It is not likely to be made public till 11th October. Meantime certain newspapers are displaying sensational headlines as to what the Report contains. These are largely matters of surmise and of certain leakages that have taken place. We would advise our readers to await the full report before framing their conclusions. The Report is one in which the various parts hang closely together, and nothing but harm can be done if certain portions are to be wrested from their context.

The Commission was one of the largest ever appointed by the British and other Governments, there being twenty-six members in all, with a staff of almost equal dimensions. Some members may have felt at first that the Commission was too large for effective working, but in reality its size ensured the thoroughness of its investigations. Frequently the Commission was divided into three sections for the hearing of evidence. Thus the Commission covered 16,000 miles in the Federation of Central Africa, and so penetrated into almost every area. After twelve weeks of intensive work in Central Africa, it spent the greater part of a month in London hearing further evidence, and thereafter worked on its findings for embodiment in the final Report. In all over 1000 memoranda were studied by the Commission, and no fewer than 750 separate witnesses or groups of witnesses appeared to give oral evidence and were heard by the Commission. Whatever is the verdict of the public on the Report there can be no doubt that it has accumulated a body of evidence unmatched in any other quarter, despite all that has been written on Central Africa in recent times.

All types of people—Africans, Asians, Europeans and Coloured—came forward to give evidence. Political parties of every hue, except some of the more extreme African Nationalist parties, were heard. There were representatives of religious bodies, both church and missionary ; representatives of commerce, industry, mining and agriculture ; African chiefs and headmen ; municipal bodies and Native authorities ; European, African and non-racial trade unions ; clergymen and teachers ; scientists and economists ; welfare workers, and ordinary members of the public, including housewives and others.

There had been much talk of a boycott. This was not felt to any great extent in Northern Rhodesia, but was marked in Nyasaland, where the Malawi Congress Party took extraordinary measures to prevent evidence being given. The public are advised to read carefully the evidence of the Commission on the prevalence of intimidation. Since the Commission visited Nyasaland various individuals have been prosecuted for intimidating their fellows. So prevalent has been the recourse to violent measures of an unlawful kind that a Roman Catholic Bishop and an Anglican Bishop have given warning to their members that those guilty of violence or intimidation will be excommunicated.

The Report will show the prevalence or otherwise of anti-Federation feeling or support for Federation, both

among Africans and Europeans, in the three sections of Northern Rhodesia, Southern Rhodesia and Nyasaland.

In the sixteen chapters of the Report and its Appenices every aspect of Federation life is analysed. The right of secession, economics, the Federal parliament, the franchise, the allocation of functions between the Federal Government and the Territorial Governments, powers of taxation and fiscal arrangements, the siting of the capital, racial discrimination and the development of partnership, safeguards—these and other subjects follow interesting and authoritative accounts of the present attitude to Federation and its advantages and achievements. The whole Report will be found to reflect the greatest care in accumulating the facts and then sifting and evaluating them. It is hoped that the public will bring the same care and objective judgment to the consideration of every part.

It must not be forgotten that it was not the business of the Commission to come to final decisions as to future measures. That will be the work of the conference of the five Governments (Great Britain, The Federal Government, Southern Rhodesia, Northern Rhodesia and Nyasaland) which is to meet in December or early next year. The Commission was purely an advisory one to these Governments.

Place Aux Dames

IN the Fitzwilliam Museum at Cambridge, there is a case displaying autograph manuscripts of famous men—statesmen, poets, and others—and among these exhibits, I was interested, recently, to see the first page of a lecture delivered in 1929 by General, not yet Field Marshal, Smuts, to Newnham College. The lecture was in honour of the Philosopher, Henry Sidgwick, who was one of the protagonists in the cause of university education for women, which had to be fought for in the mid-nineteenth century, and with which, of course, the Field Marshal was thoroughly in sympathy. In the opening words of the lecture, he paid a sincere tribute to Sidgwick, whose lectures on politics he had attended, when he was a student at the university, of which, before his death, he became chancellor. This chance encounter with "Something of Home" put me in mind that I also had a duty to recall the assistance that Fort Hare had from women on its staff, or had nurtured within its walls.

I have already recounted how, by accident rather than by design, women were included in the student body from from the very first year. Similarly, they have always had a place on the staff and have played notable parts, both on the tutorial and the hostel sides. From quite early on, also, no distinction was made in service conditions between them and the men, grade for grade. I cannot, on the scheme of these recollections, refer, except incidentally, to the voluntary contributions made to our small College Community by the wives and other relatives of members of our staff, but in the aggregate these have been very great and have been offered freely throughout the whole history of the College. On public and social occasions, in the entertainment of interested visitors, sometimes as supernumerary instructors of students who needed some special coaching, and notably in the service and care of the hostels, these ladies have added grace to efficiency and raised their contribution far above the "Cash Nexus," which is necessarily the usual bond in institutional relationships. Of those others on the regular roll of the College staff or its hostels, some note is required, for among them were some remarkable women who from time to time lent distinction to the College.

And first I would mention Miss Eva Carmichael, the Matron of the Dining Hall, and warden of the first women students. When she was selected by the Council, she had already spent some twenty years on a South African General Mission Station in Pondoland. She belonged to a notable North of Ireland family, one sister being the well-known Indian missionary and writer, Amy Wilson Carmichael, and a brother, Walter, Secretary and Treasurer of the Transkeian Bunga, and afterwards magistrate of a large district in the same reserve. As a dedicated Christian Missionary, Eva Carmichael had a deep concern for the spiritual welfare of the Bantu, a conversational command of Xhosa, and a wide knowledge of primitive customs, at any rate, as they affected the women of the tribe. When she arrived at Fort Hare, she found she had to re-adjust her outlook to grasp the emergence of a more educated group than she had been accustomed to, but the very simplicity of her previous experience proved a not unfitting preparation for the meagre provision, on which she was expected to run the hostel. How she did this upon the fee that the students were deemed able to pay, seems unbelievable in the light of present conditions, even allowing for the simplicity of the customary Bantu institutional diet, and the, at that time, still unimpaired value of the pound sterling. To maintain a student for a year of 40 weeks, the Dining Hall had exactly the sum of £14. 0s. 0d. With this small sum had to be purchased meat, maize, meal, sugar, bread, milk and jam. Even when, as was usual then, meat could be got at 6d. per lb, it could only be afforded three times per week. The saving article in this diet

was milk in the form of *amasi*—thick sour milk. Quantity and quality were adequate and so certified, but variety was conspicuous by its absence. Vegetables and fruit were not then procurable locally and the Matron had not only to exercise ingenuity in directing the native cooks, but had to keep a vigilant eye upon waste and the custody of supplies. Even so, with wages at low rates, with no charge for rent and water, and only paraffin for light and farm wood for fuel, the hostel did not always come out on its budget. Between 1916 and 1930, when Miss Carmichael retired, a period of continual increase of prices, there was always great difficulty in making ends meet, although fees also increased somewhat. It was only Miss Carmichael's unrelaxing care that enabled us, in those early days, to submit accounts that were not outrageously unbalanced. Afterwards, with increasing numbers and the provision of bursaries, we were able to make additions and improvements not possible before then.

In addition to the care of the students' meals, Miss Carmichael provided quarters for unmarried staff members, trained the Choir for the College service on Sunday night, and played the harmonium. She was a thoughtful mistress of her servants, constantly on the alert to resist any invasion of their privileges or any attempt to take advantage of their position. She was a woman of independent mind and strong convictions, and little that concerned students or staff escaped her attention. She was especially interested in the young families of the married staff and the soul of kindness in sickness. Having had all the irksomeness of pioneering, she also had the satisfaction of moving into the fine, new Dining Hall and of assisting in the furnishing and equipment of it. But for her, the chief interest at Fort Hare was centred on the characters and careers of the students, and, of course, more especially on those of the women.

Another lady no longer young, who did excellent service in the opening years of the College, was Miss Mary Fairlie who was engaged, part time, to teach the few students of the Business Course the elements of Shorthand, Typing and Book-Keeping. She was the daughter of a former Baptist minister who had married a law agent and settled in the small town of Alice. She had a friendly and charming manner which gained and held the cooperation of her pupils, some of whom subsequently held responsible positions in the public service of the Native Territories. Her bright disposition and combination of industry and orderliness made a very definite impact upon her colleagues and classes, and although only a part-time teacher, her kindly interest in the progress of her pupils and her treatment of them helped to establish good relations between those who were, at first, very strange to one another.

Although the doors of Fort Hare were early open to Coloured and Indian students who could not find the type of education they desired elsewhere, they came at first in single numbers. Some of the Indians had already begun French as a second language, while the Coloured students had, as a second modern language, their Mother Tongue, Afrikaans. To us it seemed perverse with our attenuated staff to attempt to carry on French, when there was already a second modern language in wide-spread use in the country. We, therefore, intimated that in future we could only offer Afrikaans where a second modern language was required, and we were fortunate in engaging an Afrikaans-speaking lady teacher, Miss Noppe, who after a short interval, became a full-time instructress, not only of Coloured and Indian, but of Bantu also, who had begun to arrive from districts of the Union where Afrikaans was predominantly spoken. Mrs. Roose, as she later became, was the first of a line of Afrikaans-speaking South Africans, who with their opposite members from the English section, were to make outstanding contributions at Fort Hare to the education of the Non-European, and to share with them this privilege, which, in the beginning, had been almost entirely in the hands of those from beyond the seas.

When Miss Noppe moved with her husband, Dr. Roose, to Rhodesia, the Council, on the strong recommendation of Professor Dingemans, Professor of Afrikaans and Nederlands at Rhodes University, appointed Miss B. D. Tooke, to succeed her. Miss Tooke was the daughter of Mr. John Tooke, who, after a spell as a master at Lovedale, had been appointed an Inspector of Schools under the Cape Education Department in the Transkei, with headquarters first at Butterworth and latterly at Umtata. It is significant of the general attitude to the education of the Bantu that the action of Professor Dingemans in advising Miss Tooke to join the staff of the new college, in which he was himself so intensely interested, did not meet with the whole-hearted approval of some of his colleagues, who thought that she might have found more fitting employment in European work. However, this step proved to be the first in a long period of service as lecturer in Afrikaans and Nederlands and English, and finally as Registrar of the developing college, a chain of positions of increasing importance and responsibility, with opportunities of service in music, literature and drama, to the great advantage of the College. Mr. Dent and Miss Tooke, who joined the staff within a brief interval of one another, were the first English-speaking graduates of Rhodes University which was to supply others of like calibre destined to give long periods of fine service.

ALEXANDER KERR.

New Books

The Epistles to Timothy, Titus and Philemon, by A. R. C. Leany, (S.C.M. 'Torch Bible Commentaries' Series).

Another book in this very useful series. As usual there is a fairly detailed Introduction, but it needs some effort to keep up with the arguments and with all the Scripture passages mentioned. The author is certainly aware of the problems in Timothy and Titus, particularly that of Pauline authorship, as well as that of fitting the movements of the two men in the epistles in with those given in Acts. He comes to the conclusion that to hold to Pauline authorship one must accept a second imprisonment of Paul, but that the evidence for this is extremely weak. The answer to many of these problems he finds in the theory of P. N. Harrison who has suggested, in 'The Problem of the Pastoral Epistles' that they were written at a later date (A.D. 115-120) by a sincere Paulinist who wrote 1 Timothy himself, but into 2 Timothy and Titus incorporated three brief personal notes sent by the real Paul to the real Timothy and Titus. It is not always easy to follow Leany as he outlines Harrison's theory, for he refers continually to Hanson's commentary on 2 Corinthians in this 'Torch' series, which the reader may not have in his possession.

The section on "Church Order and Ministry," which accurately pinpoints the position in the early Church, is of help and interest at a time when churches are seeking to examine their Orders and the forms and functions of their Ministries.

The Commentary section gives sound assistance, and is well set out with appropriate headings. But there is a tendency to refer to early writings without actually quoting, and these references may not be particularly helpful to the ordinary reader who does not have easy access to such early writings.

Contrary to conservative opinion Leany suggests that 'the evidence of Philemon is in favour of an Ephesian origin, (along with the Epistle to the Colossians) for Onesimus would more naturally have run from Colossae to Ephesus than from Colossae to Rome.' But he does not press the point.

All these letters were written when the Church was becoming an institution and so speak directly to our situation. The sections on 'sound doctrine,' 'church order,' and 'the place of women in the Church' seem to have a modern ring about them. R.R.S.

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The Catholic Epistles, by Alban Winter, C.R. (The Faith Press. 7/6 paper cover, 144 pages.)

This small book will be found helpful and inspiring to all who desire a devotional approach to Holy Scripture. It is not a book for general reading but is written for those wishing to meditate upon the sacred text. As the author says in his Introduction; "The great revival of the devotional use of Holy Scripture has chiefly taken the form of meditation. All who try to meditate regularly find themselves in need of a fuller understanding of the Scriptures than the text itself proves. Particularly is this true of the Epistles. That is why I have written this book." To this end the author gives a concise introduction to the General Epistles of James, 1 Peter and 1 John, followed by short notes on each verse and suggestions on the subject to be meditated upon. The book admirably fulfils the purpose for which it was written and, although some users may not agree with the interpretation of certain texts, provides food for thought in meditation. It is a book to be recommended to those desiring to make progress in the art of meditation. H.P.R.

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Call to Worship, by Neville Clark. (S.C.M. Studies in Ministry and Worship Series, No. 15. 67 pp. 7/7.)

Neville Clark's essay is the fruit of a conviction that the recovery of the Liturgy is the most urgent need of the 'Free Churches' at this time. To this end he urges a revolution in theological training and adequate manuals of Worship.

After a brief review of the Biblical pattern of Worship through the O.T. to the N.T., and on to post-apostolic days as described by Justin Martyr and Hippolytus, he traces later developments in history, Byzantine, Gallican and Roman, to the new forms created by the revolutionary ferment of the Reformation. In the development of a 'Free Church Tradition' he feels that the great Liturgy, "the traditional rich unity of Word and Sacrament" passed and that "once the creative period was over and the life that had informed it had gone, the worship of Nonconformity began to crumble under the strain of lengthy sermons and prolix prayers. Congregational participation, once its pride and glory, faltered and faded, giving place to a new and more deadly sacerdotalism. The story of Free Church worship in the eighteenth and nineteenth centuries is a sorry tale. Only a new breathing of the Spirit of God could give the dry bones life."

The corporate nature of Worship may be a truism, but it is a truism that needs to be relearnt, and to this end practical proposals as to the structure of worship follow. Discussing the question whether reform and reconstruction are possible, the writer draws upon his own experience and finds it most encouraging, thus closing a helpful contribution to a current problem of immense importance.

The Living World of the New Testament by Howard Clark Kee and Franklin W. Young (Darton, Longman Todd, London: 25s. net) is a new edition of a book published originally in 1957 under the title *Understanding the New Testament* (in the U.S.A. by Prentice-Hall Inc. Eaglewood Cliffs New Jersey). This new edition was published on April 25th 1960 and is very well produced being printed on excellent white glossy paper, pp 512 inclusive of introductory pages and index. There are end-maps—The Roman World in the time of Jesus and The Church at the close of the First Century A.D. The binding is good and durable with gold-lettered title on spine on green background, the colour of the binding being brown. Supplied with a glossy paper dust cover the volume is wholly attractive in format. The text of the book consists of a short Introduction and is divided into three parts entitled respectively 'The Community Emerges' 'The Community Expands' 'The Community Matures' Illustrations are attractive and number no less than 56. There are 11 maps in addition to those already mentioned. A nine-page very detailed index is provided. A striking feature of this book is the number of photos (taken from the air) of various places.

The book begins with the arresting statement that 'there is no book in the English language that we quote oftener and understand less than we do the New Testament.' In view of the innumerable books which have been published and which have as their aim the elucidation of the meaning of the New Testament, the only conclusion which we can reach is that far too many people do not study the New Testament carefully and do not make use of the wealth of literature which exists to help them to understand it. This book is a notable addition to that literature and we bespeak for it the welcome which it deserves on account of its form, contents and aim.

The First Part consists of six chapters viz. The Search for Community, The Community and its Convictions, the Conduct of Jesus' Ministry, the Content of Jesus' Treaching, the Crisis in Jesus' Ministry, the Life of the Earliest Community. In these chapters the various topics considered are set forth in a clear and easily discovered way which together with the Index should make reference easy. The Second Part consists of four chapters, viz. Paul the Pioneer, Mission to Europe, the Message for Gentiles, the Death of Paul and the End of the Church at Jerusalem. Here again the arrangement of the material is excellent. The Third Part consists of five chapters viz. The Community in Conflict, the Community organises, the Community in Rapprochement with the World: I, the Community in Rapprochement with the World : 2, the Hope of the Community. The orderly fashion in which the material is handled should make this a most useful textbook for both students and the general reader, more especially as a Chronological Chart is provided on pp 474 and 475 and there are suggestions for additional reading on each chapter of the book on pp 476 to 483. For the particular class of reader for which this book has been specially designed, it can be recommended as likely to prove most useful as an aid to the study of the New Testament. The style of writing is clear and simple and the scholarly authors have well exemplified the dictum that the highest art is to conceal art ' : they have very wisely not obtruded scholarship but have succeeded in providing a book which is at once readable, interesting and illuminating. It is to be hoped that the book will receive the welcome which it deserves and that many readers will find in its pages a new and living sense of the world as it existed in New Testament times. THOMAS M. DONN.

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A Garland for Ashes, by R. Yates, The Faith Press, Ltd., 7, Tufton Street, Westminster, S.W.1.

This little book of 132 pages is the story of St. Monica's Diocesan Home for Coloured girls in Natal, written by one who was on the staff of the home for 21 years.

As one reads this book one is filled with admiration at the foresight, determination and selfsacrificial devotion of the women who in turn guided the development of the school, from the first who began it in 1895 to the Miss Farmer who "mothered" it for 30 years until 1954.

This book gives not only the story of the growth of the Home but gives an insight into the lot of the Coloured People. One of the first chapters explains shortly the origins of the Coloured People in Natal, helping thus to give the background picture for the Home and the children it served. Most of the children in the Home were unwanted, destitute and deserted and the author tells of the difficulties of discipline, the constant disappointment in the girls, and the very slow growth of any *esprit de corps* at the Home, as not only had the girls the influence of bad and unhappy homelives to contend with but also the "colour complex" which "made bitterness cloud their powers of reasoning and which discounted much of the teaching meant to help them through their difficulties."

The author hopes the picture presented by her book may help to lesson the colour prejudice, which is at the back of most of the difficulties of Coloured children.

M.S.

All political news and comment in this issue are contributed and written to express the views of the *South African Outlook* by O. B. Bull, Lovedale, C.P.